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SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

No. 897

PETER SKONTOS, also known as **Panagiotis Skoundrianos**,
Petitioner,

vs.

JOHN C. GEKAS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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IN THE

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No.

PETER SKONTOS, also known as **Panagiotis Skoundrianos**,
Petitioner,

vs.

JOHN C. GEKAS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

The Petitioner, Peter Skontos, also known as Panagiotis Skoundrianos, prays that a Writ of Certiorari be issued to review the final judgment of the Illinois Supreme Court, entered in the above entitled case on January 22, 1962, dismissing the appeal.

OPINION BELOW.

No opinion was rendered by the Illinois Supreme Court.

DOCUMENTS AND PAPERS TRANSMITTED WITH PETITION.

1. Certified copy of Abstract of Record with nine additional copies.

2. Certified copy of Brief. No Brief was filed by respondent.

3. Certified copies: Of Motion filed by respondent to dismiss appeal; Objections and Counter-Suggestions of petitioner.

4. Certified copy of the judgment of the Illinois Supreme Court, entered on January 22, 1962 (Appendix A, *infra* pp. 1-2).

JURISDICTION.

The judgment of the Supreme Court of the State of Illinois, dismissing the Appeal, was entered on January 22, 1962 (Appendix A, *infra* pp. 1-2). This case was appealed from the Appellate Court of Illinois, First District. It was there heard on transfer from the Supreme Court of Illinois (Abst. 63; App. Court Rec. 2-3, 6-7, 13). The Opinion of the Appellate Court, filed October 16, 1961, is reported at 32 Ill. App. 2d 330, 177 N.E. 2d 873. It appears also as Appendix "A" (pp. 59-66) in the certified copy of the Brief transmitted with this Petition.

A "Memorandum Opinion" filed by the state trial court on March 21, 1960, appears in the Abstract pp. 54-61. On that day the said court, on the motion of respondent "for judgment on the pleadings", dismissed petitioner's suit and ordered that he "go hence without day and take nothing by his suit."

The jurisdiction of this Court is invoked under 28 U.S.C.A. Sec. 1257(3).

Article VI, Sec. 11, of the Constitution of the State of Illinois, provides:

> "After the year of our Lord one thousand eight hundred and seventy-four appellate courts, of uniform organization and jurisdiction, may be created in districts formed for that purpose, to which such appeals and writs of error as the General Assembly may provide, may be prosecuted from circuit and other courts, and from which appeals and writs of error shall lie to the Supreme Court, in all criminal cases, and cases in which a franchise, or freehold, or the validity of a statute is involved, and in such other cases as may be provided by law."

And Article VI, Sec. 8, of the Constitution of the State of Illinois provides:

> "Appeals and writs of error may be taken to the Supreme Court held in the grand division in which the case is decided, or by consent of the parties, to any other grand division."

The Legislature provided for such appeals by the enactment of Sections 74, 75, 76, 77 of Chap. 110, of the Illinois Revised Statutes (1959-1961). Section 74 thereof provides:

> "(1) Every order, determination, decision, judgment or decree reviewable by the Supreme or Appellate Court of this State is subject to review by notice of appeal. The review shall be designated an appeal and constitutes a continuation of the proceeding in the trial court. The appeal presents to the reviewing court all issues which heretofore have been presented by appeal and writ of error."
>
> * * *
>
> "(3) Every order, determination, decision, judgment or decree of the Appellate Court heretofore reviewable by the Supreme Court by writ of error shall hereafter be reviewable only by appeal. The appeal,

shall be perfected by notice of appeal filed with the Clerk of the Appellate Court within 40 days after the order, determination, decision, judgment or decree of the Appellate Court becomes final, either through denial of a petition for a hearing or the expiration of the time within which a petition for rehearing might have been filed." * * * *

"No step in the perfection of the appeal other than the filing of the notice of appeal is jurisdictional. The appeal may be taken by any person heretofore entitled to sue out a writ of error. It presents to the Supreme Court all issues heretofore presented by writ of error, and constitutes a continuation of the proceeding in the Appellate Court. All steps subsequent to the filing of the notice of appeal shall be as provided by rule."

And Section 75 thereof provides:

"(1) Appeals shall be taken directly to the Supreme Court (a) in all cases in which a franchise or freehold or the validity of a statute or a construction of the constitution is involved, * * *".

Section 76(2) thereof provides:

"An appeal is perfected when the notice of appeal is filed in the lower court. After being perfected no appeal shall be dismissed without notice, *and no step other than that by which the appeal is perfected is jurisdictional.*". (Emphasis added.)

And Section 77 thereof provides:

"(1) Appeals shall lie to the Appellate or Supreme Court, in cases in which any form of review may be allowed by law, to review the final judgments, orders or decrees of the circuit court, the superior court of Cook County, the county courts, the city courts and other courts whose judgments, orders and decrees are reviewable therein, under such limitations and conditions as may be imposed by law and subject to rules."

From the final judgment of the Illinois Supreme Court, after the taking of the appeal in the above entitled case, petitioner has no further appellate remedy under the laws of the State of Illinois.

QUESTIONS PRESENTED.

1. Whether the judgment of the Illinois Supreme Court dismissing petitioner's appeal on respondent's motion alleging conclusions only, violates the Due Process Clause of the Fourteenth Amendment.

(i) Where an appeal from the Appellate Court's Decision is a Constitutional as well as Common Law right. (Article VI, Sections 8, 11, of the Constitution of the State of Illinois; Section 74(3), Chap. 110, Illinois Revised Statutes (1959-1961), quoted on pages 3, 3-4 of this Petition and adopted here by reference.

2. Whether the judgment of the Illinois Supreme Court dismissing petitioner's appeal on such motion of the respondent violates the Due Process and Equal Protection of the Law Clause of the Fourteenth Amendment.

(i) Where the Appellate Court's Decision affirmed the dismissal of petitioner's cause of action by the state trial court, which did not hear evidence and denied petitioner's right to trial by jury. (Abst. 51, 61; Rec. 194, 239).

(ii) Where the Decision of the Appellate Court negates and violates Section 19, Article II, of the Illinois Constitution which provides:

> "Every person ought to find a certain remedy in the law for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly, and without delay."

(iii) Where the Appellate Court's Decision affirmed the state trial court's dismissal of petitioner's cause of action on respondent's motion which did not specify any grounds whatever. (Abst. 51; Rec. 194).

(iv) Where the Appellate Court's Decision holds that respondent had the right to decide that his client, petitioner herein, was insane or incompetent and to refuse to pay over client's money.

(v) Where the state Appellate Court's Decision holds that the respondent, while refusing to pay over client's money, had the right to file a petition in the Probate Court to adjudicate the petitioner, his then client, insane and incompetent, without the jurisdictional Notice and without a hearing.

(vi) Where said Appellate Court's Decision holds that Section 265(113) of Chapter 3, Illinois Revised Statutes, 1953, does not require Notice and hearing for an alleged incompetent.

(vii) Where the Appellate Court's Decision holds "that the requirements of due notice and a proper hearing were satisfied", in direct contradiction in the same paragraph of its said Decision that "* * * plaintiff did not receive notice of the application for appointment of a conservator in the Probate Court * * *".

(viii) Where said Appellate Court Decision holds that the record fails to reveal any jurisdictional defect in the proceedings and orders of the County and Probate Courts, in direct contradiction of the complete authenticated Record on Appeal.

(ix) Where the Appellate Court Decision holds that void orders entered without the jurisdictional Notice to petitioner, shown on the face of respondent's own exhibits attached to his Answer, could not be attacked.

(x) Where the Appellate Court's Decision holds that the County and Probate Courts acquired jurisdiction by a mere recital of jurisdictional facts, contrary to what is shown on the face of the Record on Appeal.

(xi) Where the state Appellate and trial court ignored and refused to consider the wrongful and willful detention or conversion of petitioner's money, manifestly shown by respondent's own exhibit "J", attached to his Answer (Abst. 31; Rec. 46), which is contrary to the provisions of Paragraphs 213, 210, 208, Chapter 38, Illinois Revised Statutes, 1951-1961; and Canon 11, of American and Chicago Bar Associations, which provides:

> "Money of the client or other trust property coming into the possession of the lawyer should be reported promptly, and except with the client's knowledge and consent should not be commingled with his private property or be used by him."

3. Whether the State of Illinois Supreme Court can ignore the command of the Due Process and Equal Protection of the Laws Clause of the Fourteenth Amendment and deny at will, the safeguards of our constitutional system, required to be extended to all.

(i) Where under the Illinois Constitutional and statutory provisions quoted on pages 3, 3-4 of this Petition and adopted here by reference, no authority existed for such judgment order dismissing the appeal.

(ii) Where such judgment order of dismissal violated also the basic constitutional guarantees of the Illinois Constitution (Sections 1, 2, 5, 19, Article II; and Sections 8, 11, Article VI; and the legislative enactments pertaining to appeals (Sections 74(3), 75(1)(a), 76(2), 77(1), Chapter 110, Illinois Revised Statutes (1959-1961). Sections 1, 2 and 5, Article II, of the Illinois Constitution provide:

> Sec. 1. "All men are by nature free and independent, and have certain inalienable rights—among these

are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed."

Sec. 2. "No person shall be deprived of life, liberty or property without due process of law."

Sec. 5. "The right of trial by jury, *as heretofore enjoyed, shall remain inviolate;* * * *". (Emphasis added.)

(iii) Where the Appellate Court's Decision holds that a copy of an alleged police report attached to respondent's Answer, the authenticity and contents of which are denied in petitioner's Reply (Abst. 38, par. 15; Rec. 177), is evidence of petitioner's alleged mental illness; contrary to the rule of law that the mere attempt to introduce such report as evidence is reversible error.

(iv) Where the Appellate Court's Decision holds:

(1) That the endorsement on the back of the check in question with the words "Pay to the Order of John C. Gekas", is a limited endorsement, without any evidentiary proof whatever.

(2) That the respondent, John C. Gekas, endorsed the check over to "Nikitas Nomikos", which is contrary to the fact manifested on the face of said check attached to respondent's Answer, showing no endorsement signature by said John C. Gekas (Abst. 27; Exh. G-2; Rec. 108).

(3) That the affidavit of a stranger to the suit, Nikitas Nomikos, attached to respondent's Answer, is true, although it contains the patently false statement, that the check in question was "*later endorsed by John C. Gekas, payable to the order of Nikitas Nomikos*" (Abst. 27; Exh. G-1; Rec. 107).

(v) Where the Appellate Court's Decision deprives the petitioner of the protection under the well settled rule of law that the burden is on the respondent, as attorney, fiduciary and movant on the motion for judgment on the pleadings, to show that no fact question exists.

(vi) Where the Appellate Court's Decision holds that the respondent as attorney and fiduciary did not owe his client, the petitioner, an accounting.

(vii) Where the Appellate Court's Decision adopted the comments and argument of the state trial court and of the respondent, as evidence, contrary to what is shown on the face of the Record on Appeal.

(viii) Where the Appellate Court's Decision deprived the petitioner of the protection of Section 32, Chap. 110, Ill. Rev. Stat., 1959-1961, giving petitioner the right to deny and refute, in his Reply, respondent's allegations in his Answer.

(ix) Where the Appellate Court's Decision deprived the petitioner of the protection of Sections 33(3); 35(1); 44(1)(2), 4, Rules 101.12, 101.15(1) of the Illinois Supreme Court, and of Sections 40(1)(2)(3), 42(2)(3), 45(1)(2), Chapter 110, Illinois Revised Statutes (1959-1961).

(x) Where the Appellate Court's Decision holds that the petitioner waived his rights because he did not appeal from the void orders of the County and Probate Courts, while the respondent was withholding and refusing to pay over petitioner's money, and while respondent was representing conflicting interests against his own client, petitioner herein. (Abst. 29, Exh. H-12, 3rd and 5th pars.; Exh. H-13, 4th and 5th pars.; Exh. 15, 1st and 3rd pars.; Rec. 120, 121, 123).

(xi) Where the Appellate Court's Decision holds that respondent's Answer is evidentiary, ignoring the fact that no evidence was heard, and that the verification to said Answer with the words "*and that any and all allegations stated to be on information he believes that each and all such allegations are true*", is insufficient, evasive and a nullity.

(xii) Where the Appellate Court's Decision holding that the respondent had the right to have his own client, petitioner herein, adjudicated incompetent, without Notice and without a hearing, is in direct conflict with the Decision by the same Court, the same Division, on July 24, 1961, *In Re: Oclerich's Estate*, 31 Ill. App. 2d 457, 176 N.E. 2d 549, 550, holding:

> "A proceeding to appoint a conservator of the person of an alleged incompetent is a proceeding *in personam* and is based on the jurisdiction of the person. The status of incompetency can be determined only by a hearing on the petition and the overcoming of the presumption that such person is sane. It is the finding of the court or jury that such person is incompetent that creates the status of incompetency, and it cannot be presumed in order to establish jurisdiction."

And at page 551, the same Appellate Court, same Division holding:

> "However, a finding by a court that it has jurisdiction is overcome when the finding is irreconcilable with the facts disclosed by the record."

(xiii) Where an *ex parte* affidavit by a defendant in another suit, not attached to respondent's Answer, nor filed in the trial court (Abst. 12-23; Rec. 52-88), and no part of the complete authenticated Record on Appeal (Abst. 62; Rec. 245, 248, 250), is considered and accepted as conclusive evidence by the Illinois Appellate Court. (*Skontos* v. *Gekas*, 177 N.E. 2d 873 at page 876, 32 Ill. App. 2d 330).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

A). Amendment XIV to the Constitution of the United States, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

B). Article II, Sections 1, 2, 5, 19 (Bill of Rights); Article VI, Section 8 (Supreme Court); Article VI, Section 11 (Appellate Courts), of the Constitution of the State of Illinois, Ill. Rev. Stat. 1961, pp. 9-10, 16, are quoted on pages 7-8, 5, 3 of this Petition and adopted here by reference.

C). Illinois Appellate Practice, Chap. 110, Sections 74(1)(3); 75(1)(a), 76(2), 77(1), Ill. Rev. Stat. 1961, pp. 1241, 1242, are quoted on pages 3-4 of the Petition and incorporated here by reference.

D). Illinois Supreme Court Rules, Chap. 110, 101.15(1), Ill. Rev. Stat. 1961, p. 1249, provides:

> "(1) Affidavits in support of and in opposition to a motion for summary judgment or decree, and affidavits under section 48 of the Civil Practice Act, shall be made on the personal knowledge of the affiants; *shall set forth with particularity* the facts upon which the claim, counterclaim or defense is based; shall have attached thereto sworn or certified copies of all papers upon which the affiant relies; *shall not consist of conclusions but of facts admissible in evidence; and shall*

affirmatively show that the affiant, if sworn as a witness, can testify competently thereto. If all of the facts to be shown are not within the personal knowledge of one person, two or more affidavits shall be used." (Emphasis added.)

E). Illinois Civil Practice Act, Chap. 110, Section 48(1)(a) to 48(1)(i) inclusive, specifying all the grounds for involuntary dismissal, and 48(3), 48(6), Ill. Rev. Stat. 1961, p. 1235, provides:

"48. Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds. If the grounds do not appear on the face of the pleading attacked the motion shall be supported by affidavit:

"(a) That the court does not have jurisdiction of the subject matter of the action, provided the defect cannot be removed by a transfer to a court having jurisdiction.

"(b) That the plaintiff does not have legal capacity to sue or that the defendant does not have legal capacity to be sued.

"(c) That there is another action pending between the same parties for the same cause.

"(d) That the cause of action is barred by a prior judgment.

"(e) That the action was not commenced within the time limited by law.

"(f) That the claim or demand set forth in the plaintiff's pleading has been released, satisfied of record, or discharged in bankruptcy.

"(g) That the claim or demand asserted is unenforceable under the provisions of the Statute of Frauds.

"(h) That the claim or demand asserted against defendant is unenforceable because of his infancy or other disability.

"(i) That the claim or demand asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim or demand."

"(3) If, upon the hearing of the motion, the opposite party presents affidavits or other proof denying the facts alleged or establishing facts obviating the grounds of defect, the court may hear and determine the same and may grant or deny the motion. If a material and genuine disputed question of fact is raised the court may decide the motion upon the affidavits and evidence offered by the parties, or may deny the motion without prejudice to the right to raise the subject matter of the motion by answer *and shall so deny it if the action is one at law and a jury demand has been filed by the opposite party in apt time.*" (Emphasis added.)

"(6) The form and contents of said procedure relating to affidavits under this section shall be as provided by rule."

F). Illinois Civil Practice Act, Chap. 110, Sections 40 (1)(2)(3); 42(2)(3); 45(1)(2), Ill. Rev. Stat. 1961, pp. 1233, 1234, provide:

"40.(1) General issues shall not be employed. Every answer and subsequent pleading shall contain an explicit admission or denial of each allegation of the pleading to which it relates.

"40.(2) Every allegation except allegations of damages, not explicitly denied is admitted, unless the party states in his pleading that he has no knowledge thereof to form a belief, and attaches an affidavit of the truth of the statement of want of knowledge, or unless the party has had no opportunity to deny.

"40.(3) Denials must not be evasive, but must fairly answer the substance of the allegation denied."

"42.(2) No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he is called upon to meet.

"42.(3) All defects in pleadings, either in form or substance, not objected to in the trial court are waived."

"45.(1) All objections to pleadings shall be raised by motion. The motion *shall point out specifically* the defects complained of, and shall ask for appropriate relief, such as: that a pleading or portion thereof be stricken because substantially insufficient in law, or that the action be dismissed, or that a pleading be made more definite and certain in a specified particular, or that designated immaterial matter be stricken out, or that necessary parties be added, or that designated misjoined parties be dismissed, and so forth.

"45.(2) If a pleading or a division thereof is objected to by a motion to dismiss or for judgment or to strike out the pleading, because it is substantially insufficient in law, *the motion must specify wherein the pleading or division thereof is insufficient.*" (Emphasis supplied.)

G). Illinois Civil Practice Act, Chap. 110, Sections 32; 33(3); 35(1); 44(1)(2); Illinois Supreme Court Rule 101.12; Section 4; Ill. Rev. Stat. 1961, pp. 1232, 1233, 1234, 1248, 1226-1227, respectively, provide:

"32. • • • If new matter by way of defense is pleaded in the answer, a reply shall be filed by the plaintiff, but the filing of a reply is not an admission of the legal sufficiency of the new matter. Further pleadings may be permitted as required by the court."

"33.(3) Pleadings shall be liberally construed with a view to doing substantial justice between the parties."

"35.(1) • • • In pleadings which are so verfied, the several matters stated shall be stated positively or upon information and belief only, according to the fact. Verified allegations do not constitute evidence except by way of admission."

44.(1) Subject to rules any plaintiff or plaintiffs may join any causes of action, whether legal or equitable or both, against any defendant or defendants";

"44.(2) Any causes of action, counterclaim, third party claim or issue may be transferred at any time, by order of the court, from the law docket to the equity docket, or vice versa, as the nature thereof may require."

Illinois Supreme Court Rule: "101.12 Different breaches of a contract; bond or other obligation, and different breaches of duty, whether statutory or at common law, or both, growing out of the same transaction, or based on the same set of facts, may be treated as a single claim or cause of action, and set up in the same count."

"4. This Act shall be liberally construed, to the end that controversies may be speedily and finally determined according to the substantive rights of the parties. The rule that statutes in derogation of the common law must be strictly construed does not apply to this Act or to the rules made pursuant thereto."

H). Chapter 38, Paragraphs 213, 208, 210, Ill. Rev. Stat. 1951-1961, pp. 1843 (1961), provide:

"213. *If any attorrney at law,* • • • or other person authorized by law to collect money, shall fail or refuse to pay over any money collected by him, less his proper charges, on demand by the person entitled to receive the same, or his agent duly authorized, he shall be fined not exceeding double the amount retained by him, or confined in the county jail not exceeding one year, or both, and be removed from office, and thereafter he

shall be ineligible to be elected or appointed to, or hold any office under the constitution or laws of this state. And if such attorney is an attorney at law, he shall thereafter be forever prohibited from practicing his profession in this state." (Emphasis added.)

"208. * * * 'Convert to his own use' as used in this Act, shall mean the application or use of such money or property in any manner or for any purpose not authorized by the owner thereof, or that he advised, authorized, directed, aided or knowingly consented to such use or application."

"210. . . . if any clerk, *agent*, servant, solicitor, broker, apprentice or officer of *any person*, co-partnership, society or association, *receiving any money, substitute for money or thing of value whatsoever in his fiduciary capacity*, shall embezzle or fraudulently convert or appropriate the same or any part thereof to his own use, or with intent to embezzle, shall take, secrete or otherwise dispose of, or fraudulently withhold, appropriate, lend, invest or otherwise use or apply any money, substitute for money or thing of *value received by him in such fiduciary capacity*, or the portion thereof, belonging to his *principal*, employer or *fiduciary*, without the consent of the company, *person*, co-partnership, society or association *for or on account of which the same was received by him, he shall be deemed guilty of larceny* and shall be punished as provided by the criminal statutes of this state for the punishment of larceny, *irrespective of whether any such officer, agent, clerk, servant, solicitor, broker or apprentice has or claims to have any commission or interest in such money, substitute for money, or thing of value so received by him.*" (Emphasis supplied.)

I). Illinois Mental Health Code, Chap. 91½, Section 5-3, relating to notice, Ill. Rev. Stat. 1961, p. 770, provides:

"The order setting the hearing of the petition shall direct that reasonable notice of the time and place of the holding of the hearing be served upon the person

alleged to be mentally ill, mentally deficient, or in need of mental treatment".

J). Illinois Probate Act, Chap. 3, Sections 113, 117, Ill. Rev. Stat. 1953-1961, pp. 48, 49; Rules of Practice of the Probate Court of Cook County, Illinois, 1953-1955, Rules 8, 31, provide:

§ 113. POWER TO APPOINT CONSERVATOR.] Probate Courts and county courts of counties in which there are no probate courts have the power to appoint conservators as follows:

(a) If a person is adjudged mentally ill or mentally deficient pursuant to the provisions of the Mental Health Code or has been adjudged insane, mentally ill, feeble minded or mentally deficient under any prior law of this state in a county court of any county in this state in which there is no probate court and the person adjudged mentally ill, insane, mentally deficient or feeble minded is a resident of that county, upon the filing of a verified petition by a reputable citizen of this state either before or after the adjudication of mental illness, insanity, mental deficiency or feeble mindedness that court may appoint a conservator for the mentally ill, insane, mentally deficient or feeble minded person without further hearing. The court may require such notice and other proceedings as it deems expedient.

(b) If a person is adjudged mentally ill, insane, mentally deficient or feeble minded in a county court of any county of this state other than the court in which the petition for the appointment of a conservator is filed, or in a court of competent jurisdiction of a foreign state, upon the filing by a reputable citizen of this state of a verified petition and a duly authenticated copy of the record of the adjudication of mental illness, insanity, mental deficiency or feeble mindedness in a county court of any county of this state or in a court of a competent jurisdiction of a foreign state.

the proper court may appoint a conservator for the mentally ill, insane, mentally deficient or feeble minded person without further hearing. If the person is adjudged mentally ill, insane, mentally deficient or feeble minded in a court of competent jurisdiction of a foreign state the court shall require such notice as it deems expedient. In all other cases the court may require such notice and other proceedings as it deems expedient.

(c) Upon the filing of a verified petition by a reputable citizen of this state, the proper court may adjudge a person an incompetent pursuant to this Act and appoint a conservator for him. The court may require such notice of the hearing on the petition as it deems expedient. (Amended by Act approved July 16, 1951, effective Jan. 1, 1952.)

• • •

§ 117. SUMMONS—JURY—PROCEDURE FOR ADJUDICATION OF INCOMPETENCY.] On the filing of a petition for the adjudication of incompetency and appointment of a conservator pursuant to Section 113 (c) of this Act, the court shall set the cause for hearing, and summons directed to the alleged incompetent shall be issued. Service of summons shall be had upon the alleged incompetent at least three days before the return day designated therein by leaving a copy thereof with him personally and informing him of its contents. Upon good cause shown, supported by affidavit, the court may excuse service on him personally and substitute therefor any of the modes of service provided for in other civil cases. On or before the return day designated in the summons or within such further time as the court permits, any party to the proceeding may demand a jury of either six or twelve persons to be impaneled to try the case. If no party demands a jury, the court may hear the case without a jury, in which case the court shall find in its order that no party demanded a jury. The court shall cause the findings of the jury or the court to be recorded at large by the clerk of the court, and unless the court grants a new trial, the court shall enter an order in accordance with the finding.

Rule 8: "Notice of the time and place of hearing on a petition for adjudication of incompetency or for the appointment of a conservator *shall be given to the alleged incompetent* * * *. Five days' notice shall be given to each person entitled to notice who is a resident of this state and ten days' notice shall be given to each person entitled to notice who is not a resident of this state." (Emphasis added.)

Rule 31: "Notice of the hearing on a guardian's or conservator's petition to resign *shall be given* * * * *to the ward,* * * *." (Emphasis added.)

STATEMENT OF THE CASE.

Petitioner's verified Complaint with Jury Demand was filed on May 11, 1959. It states a cause of action for respondent's violation of trust as attorney, against his client, petitioner herein; for wrongful and willful detention or conversion of petitioner's money; corrupt practices; fraud, deceit, and conspiracy to injure, and deprive the petitioner of his civil rights by adjudicating or causing to adjudicate him as incompetent or insane, while the respondent was withholding and refusing to pay over petitioner's money; and for accounting. The essential allegations are set forth in the verified Complaint and Bill of Particulars (Abst. 1-7, 10-12; Rec. 3-8, 44-46).

The respondent filed his Answer (37 pages). It consists of denials, argumentative allegations, interpretations and conclusions, asserting respondent's right to decide that his client, petitioner herein, was insane or incompetent and to refuse to pay over client's money, which was withheld or converted since on to wit: August 6, 1951. Eighty-four documents are attached to respondent's Answer labeled as exhibits. Respondent alleges interpretations contradicting his own exhibits, and repeatedly pleads the statute of limitations. (Abst. 12-33; Rec. 52-170). An insufficient and evasive verification is attached to respondent's Answer. (Abst 23; Rec. 88).

Petitioner's verified Reply was filed, specifically denying respondent's allegations, interpretations and conclusions and refutes the affirmative defenses alleged in respondent's Answer. (Abst. 33-51; Rec. 172-190).

On January 12, 1960, the respondent filed his unverified motion for involuntary dismissal of petitioner's cause of

action, or for judgment on the pleadings or for summary judgment against petitioner. (Abst. 51; Rec. 194). No grounds were specified. On the same day respondent filed a motion to strike petitioner's Reply to the Answer. (Abst. 51; Rec. 196-197). A Notice of respondent's said motions was addressed direct to the petitioner, although he was represented by his attorney of record. (Abst. 53; Rec. 207). Petitioner's motions were filed to strike or deny the above described motions of respondent. (Abst. 51-53; Rec. 199, 201-202).

The respondent abandoned his motion to strike petitioner's Reply. This fact is confirmed by the trial court judge in his Memorandum Opinion, where it is stated: "The defendant, although he filed a motion to strike the reply, or portions thereof, elected to proceed upon his motion for judgment." (Abst. 54; Rec. 230).

On March 21, 1960, the state trial court entered an order on the motion of respondent for judgment on the pleadings, dismissing petitioner's suit at his costs and ordering "that the plaintiff go hence without day and take nothing by his suit". *No evidence was heard.* (Abst. 61; Rec. 239).

The petitioner appealed direct to the Illinois Supreme Court (Abst. 61-62; Rec. 241), and asserted and preserved the constitutional questions involved in this case.

The Illinois Supreme Court transferred the case to the Illinois Appellate Court, First District (Abst. App. Court 63; Rec. 2-3).

On October 16, 1961, the Illinois Appellate Court entered an Order affirming the trial court's judgment order of dismissal (Abst. App. Court 63; Rec. 6-7), and on November 20, 1961, said Appellate Court denied the Petition for Rehearing. (Abst. App. Court 63; Rec. 8-9).

Petitioner then appealed to the Illinois Supreme Court. (Abst. App. Court 63; Rec. 11-13).

On January 22, 1962, the Illinois Supreme Court, dismissed petitioner's appeal from the Appellate Court (Appendix A, *infra* pp. 1-2), on the motion of respondent alleging conclusions only. Petitioner had filed his Objections and Counter-Suggestions. (Certified copies transmitted with Petition).

In petitioner's Brief filed in the Illinois Supreme Court, the jurisdictional grounds are specified and the constitutional questions are raised and asserted. (Certified copy of Brief, pp. 8-12; 4-7; 26-29; 29-37; 43, par. (18); 44-46, par. (19).

They were raised and asserted in petitioner's Objections and Counter-Suggestions to respondent's motion to dismiss the appeal, pp. 1, 3.

Constitutional questions were raised and asserted in petitioner's pleadings in the state trial court. (Abst. 2, par. 4; 3, par. 4(d); 5, par. 4(h); 6, par. 5; 10, par. 4; 34, par. 3; 38, par. 12; 39, par. 16; 40, par. 17; 45, par. 23; 46, par. 23; 47, par. 23; 49, par. 24; 50, par. 25; Rec. 3, 5, 6, 7, 45, 173, 177, 176, 177, 178, 179, 184, 185, 186, 187, 189).

Constitutional questions are inherent in the judgment order of the state trial court dismissing petitioner's cause of action, without hearing any evidence (Abst. 61; Rec. 239); they are apparent on the face of the Record on Appeal; and are inherent in the judgment of the Illinois Supreme Court dismissing petitioner's appeal, *viz.*: disregard and denial of the basic constitutional guarantees of Due Process of Law and Equal Protection of the Laws.

Under the laws of the State of Illinois, petitioner has no further appellate remedy.

REASONS FOR GRANTING THE WRIT.

1. "Upon the state courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the constitution of the United States and the laws made in pursuance thereof, and all treaties made under their authority, as the supreme law of the land, "*anything in the constitution or laws of any state to the contrary notwithstanding*". If they fail therein, and withhold or deny rights, privileges, or immunities secured by the constitution and laws of the United States, the party aggrieved may bring the case from the highest Court of the state in which the question could be decided, to this court for final and conclusive determination." (*Robb* v. *Connelly*, 4 S. Ct. 54, 551, 111 U.S. 624. 28 L. Ed. 542.) (Emphasis added).

"• • • A state may not, by any of its agencies, disregard the prohibitions of the fourteenth amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts, and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment. In determining what is due process of law, regard must be had to substance, not to form. This court referring to the fourteenth amendment has said: 'Can a state make anything due process of law which, by its own legislation, it chooses to declare such? To affirm this is to hold that the prohibition to the states is of no avail, or has no application, where the invasion of private rights is effected under the forms of state legislation'. *Davidson* v. *New Orleans*, 96 U.S. 97, 102. The same question could be propounded, and the same answer should be made, in reference to judicial proceedings inconsistent with the requirement of due process of law." (*Chicago, B. & Q. R. Co.* v. *City of Chicago*, 166 U.S. 226; 17 S. Ct. 581, 586.)

All through the proceedings in the state courts the respondent demanded and obtained decisions without permitting inquiry. Such practice was aptly characterized by Chief Justice Marshall in *Cohens v. Virginia*, 6 Wheat. 264, 5 U.S. 82, at page 85:

> "• • • for he who demands decision without permitting inquiry, affirms that the decision he asks does not depend on inquiry".

And at page 106, it is said:

> "The constitution and laws of a state, so far as they are repugnant to the constitution and laws of the United States, are absolutely void."

This Court in *Chaffee v. United States*, 18 Wall. 516, 85 U.S. 908, 912, states:

> "The testimony of living witnesses, personally cognizant of the facts of which they speak, given under the sanction of an oath, in open court, where they may be subjected to cross-examination, affords the greatest security for truth." *Crawford v. Nilan*, 289 N.Y. 444, 46 N.E. 2d 512; *Johnson v. Plodzien*, 31 Ill. App. 2d 222, 227.

Such judgments demanded and obtained by respondent from the Illinois state courts without hearing evidence and without ascertainment of truth, were also characterized in *Hultberg v. Anderson*, 252 Ill. 607, where the Court held (p. 615):

> "A judgment pronounced without any judicial determination of the facts which alone can support such judgment is merely the arbitrary edict of the Judge, and is as much wanting in due process of law as though the party against whom it is entered had received no legal summons. *Chicago, Burlington and Quincy Railroad Co. v. City of Chicago*, 166 U.S. 226; *Fayerweather v. Rich*, 195 *id.* 276."

And this Court in *Smith* v. *Woolfolk*, 115 U.S. 143, 5 S. Ct. 1177, said (p. 1180):

> "For the decree of a court rendered against a party who has not been heard, and has had no opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other court." *Windsor* v. *McVeigh*, 93 U.S. 274.

2. The denial of rights given by the Due Process and Equal Protection of the Laws Clause of the Fourteenth Amendment need not be by legislation. Its provisions are generic in terms and are addressed not only to the states, but to every person, whether natural or judicial, who is the repository of state power. The denial of Due Process may be by the judicial as well as by the executive or legislative branches of the state government. (*Shelley* v. *Kraemer*, 68 S. Ct. 836, 842-843, 844, 846, 847, 334 U.S. 1; *Brinckerhoff* v. *Hill*, 281 U.S. 673, 680 and cases cited; *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U.S. 27, 286; *Scott* v. *McNeal*, 154 U.S. 34, 45.) In *Brinckerhoff*, Mr. Justice Brandeis, said (281 U.S. on p. 278):

> "We are of opinion that the judgment of the Supreme Court of Missouri must be reversed, because it has denied to the plaintiff due process of law—using that term in its primary sense of an opportunity to be heard and to defend its substantive right."

In *Ohio Bell Telephone Company* v. *Public Utilities Commission*, 301 U.S. 292, Mr. Justice Cardozo, said (p.

> "There can be no compromise on the footing of convenience or expedience or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored."

This Court in *Baltimore & O. R. Co.* v. *United States*, 298 U.S. 349, 56 S. Ct. 797, 807-808, held that "The due process clause assures a full hearing before the Court or

other tribunal empowered to perform the judicial function involved. That includes the right to introduce evidence and have judicial findings based upon it". (Citing cases). Petitioner was deprived of this right by the state courts.

Through the disguise of filing multitudinous papers labeled "exhibits", without proof of their authenticity, contents and materiality, basic constitutional guarantees were ignored and denied to petitioner, by the state courts. "The truth needs no disguise." (*Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238, 247.) "Manifestly there is no hearing when the party does not know what evidence is offered or considered and is not given an opportunity to test, explain or refute." (*Interstate Commerce Commission* v. *Nashville R.R. Co.*, 227 U.S. 93.)

This Court in *Napue* v. *People of the State of Illinois*, 360 U.S. 264, 79 S. Ct. 1173, 1178, said:

> "The duty of this Court to make its own independent examination of the record when federal constitutional deprivations are alleged is clear, resting, as it does, on our solemn responsibility for maintaining the Constitution inviolate." (Citing cases.) "This principle was well stated in *Nietmoko* v. *State of Maryland*, 340 U.S. 268, 271, 71 S. Ct. 325, 95 L. Ed. 267:
>
> > "'In cases in which there is a claim of denial of rights under the Federal Constitution, this Court is not bound by the conclusions of lower courts, but will reexamine the evidentiary basis on which those conclusions are founded.'"
>
> "It is now so well settled that the Court was able to speak in *Kern-Limerick, Inc.* v. *Scurlock*, 347 U.S. 110, 121, 74 S. Ct. 403, 410, 98 L. Ed. 546, of the 'long course of judicial construction which establishes as a principle that the duty rests on this Court to decide for itself facts of constructions upon which federal constitutional issues rest'". (Citing cases.)

In *Williams* v. *Baffy*, 96 U.S. 176, the Court said (p. 183):

> "Any enactment from whatever source originating to which a state gives the force of law is a Statute of the State within the meaning of the clause cited relating to the jurisdiction of this Court. It would be a narrow construction to limit the term to such enactments as have gone through various stages of consideration by the legislatures." *Oyama* v. *State of California*, 68 S. Ct. 269, 270, 332 U.S. 633; *Norris* v. *Alabama*, 294 U.S. 587, 590, 55 S. Ct. 579, 580; *Chicago, B. & Q. R. Co.* v. *City of Chicago*, 166 U.S. 226, 17 S. Ct. 581, 583.

3. "Equal protection of the laws is something more than an abstract right. It is a command which the state must respect, the benefits of which every person may demand. Not the least merit of our constitutional system is that its safeguards extend to all—the least deserving as well as the most virtuous." (*Hill* v. *State of Texas*, 316 U.S. 400, 62 S. Ct. 1159, 1162.)

The respondent, on or about August 16, 1951, decided that his client, petitioner herein, was incompetent and refused to pay over to him the money collected in the settlement of an uncontested claim for money had and received. (Abst. 19-20; Rec. 79-80; Abst. 2-3, par. (b), 10-11; Rec. 4, 44-45). In his Answer to the Complaint he alleges:

> *"and this defendant after his opinion and belief about the mental incapability of the plaintiff was confirmed by the County Court of Cook County and realizing plaintiff's condition, without any consideration, did on September 30, 1953, waive and relinquish any further claim for fees against the plaintiff or his conservator."* (Abst. 22; Rec. 87-88).

The respondent also alleges (Abst. 19; Rec. 79-80):

> "• • • *defendant had a long conversation with him and this defendant from his investigation and inquiries from the relatives of the plaintiff came to believe that it would be to the best interests of the plaintiff not to have any moneys turned over to him* • • •".

Respondent wanted "security" to pay over client's own money. (Abst. 20; Rec. 81).

And on September 28, 1953, the respondent, while he was still withholding and refusing to pay over client's money, filed and presented his own sworn petition in the Probate Court of Cook County, Illinois, without the required jurisdictional notice to petitioner, alleging that Peter Skontos, his client, "*is wholly incapable of managing his estate and is incompetent*" and that he "*is unable to handle his own money and he gives it away though he needs it*". (Abst. 27, 28; Rec. 109, 111). Without a hearing to petitioner, respondent procured an order adjudicating his own client incompetent. (Abst. 28; Rec. 110).

> "It is difficult to believe that in a civilized community there still remain those who, under the guise and sacred name of Justice, will perpetrate such outrages." (*Bailey* v. *Welch*, 307 Ill. App. 230, 232).

> "In the civil rights cases, 1883, 109 U.S. 3, 11, 17, 3 S. Ct. 18, 21, 27 L. Ed. 835, this Court pointed out that the Amendment makes void 'state action of every kind' which is inconsistent with the guaranties therein contained, and extends to manifestations of 'state authority in the shape of laws, customs, or judicial or executive proceedings.' Language to like effect is employed no less than eighteen times during the course of that opinion." (*Shelley* v. *Kraemer*, 334 U.S. 1. 68 S. Ct. 836, 842.)

Mr. Justice Clark, speaking for the majority of the Court in *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 81 S. Ct. 856, said (p. 861):

> "But no State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be. It is no consolation to an individual denied the equal protection of the laws that it was done in good faith."

And in *United States* v. *Bank of New York & Trust Co.*, 296 U.S. 463, 56 S. Ct. 343, this Court said (p. 348):

> "Upon the state courts, equally with the courts of the union, rests the obligation to guard and enforce every right secured by the Constitution and the laws of the United States whenever those rights are involved in any suit or proceedings before them. *Robb* v. *Connelly*, 111 U.S. 624, 637, 4 S. Ct. 544, 28 L. Ed. 542." *Smith* v. *O'Grady*, 61 S. Ct. 572, 573, 312 U.S. 329.

CONCLUSION.

For the reasons above stated it is respectfully submitted that this Petition for a writ of certiorari be granted.

Respectfully submitted,

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Attorney for Petitioner.

APPENDIX A.

UNITED STATES OF AMERICA

State of Illinois } ss.
Supreme Court }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of January in the year of our Lord, one thousand nine hundred and sixty-two, within and for the State of Illinois.

Present: Harry B. Hershey, Chief Justice

Justice Joseph E. Daily — Justice Walter V. Schaefer
Justice Ray I. Klingbiel — Justice Byron O. House
Justice Roy J. Solfisburg, Jr.

William G. Clark, Attorney General
Robert G. Miley, Marshal

Attest: Mrs. Earle Benjamin Searcy, Clerk

Be It Remembered, that, to-wit: on the 22nd of January 1962, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Peter Skontos, also known as Panagiotis Skoundrianos,	Appellant	Appeal from Appellate Court First District 59 S 8012 48390
No. 37000 *vs.* John C. Gekas,	Appellee	

And now, on this day, the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the appellee to dismiss this

appeal and being fully advised of and concerning the premises, are of the opinion that the said appeal is not well taken.

Therefore, it is considered and ordered by the Court that said appeal be and the same is hence dismissed.

And it is further considered by the Court, that the said appellee recover of and from the said appellant costs by him in this behalf expended, to be taxed, and that he have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 9th day of March, A.D. 1962.

Mrs. Earle Benjamin Searcy
Clerk,

Supreme Court of the State of Illinois.

Office-Supreme Court, U.S.
FILED
MAY 21 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1961

No. 897

PETER SKONTOS, also known as Panagiotis Skoundrianos,

Petitioner,

vs.

JOHN C. GEKAS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI IN BEHALF OF RESPONDENT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1961

No. 897

PETER SKONTOS, also known as Panagiotis Skoundrianos,

Petitioner,

vs.

JOHN C. GEKAS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI IN BEHALF OF RESPONDENT.

OPINIONS AND ORDERS.

1. Opinion of the Trial Court (Abst. 54-61).

2. Opinion of the Appellate Court (Petitioner's Brief 59-66).

3. Order of the Trial Court Dismissing Case (Abst. 61).

4. Order of the Supreme Court of Illinois Transferring the Case to the Appellate Court of Illinois—First District (Respondent's Brief, Page 11a).

5. Judgment of the Appellate Court affirming judgment of Trial Court. (Respondent's Brief, Page 1a)

6. Order of the Supreme Court of Illinois Dismissing Petitioner's Second Appeal (Respondent's Brief, Page 3a).

JURISDICTION.

The Petition of the Petitioner and his certified copies of his brief and abstract, together with the certified copies of the motion of the respondent, and objections of the petitioner thereto, filed in the Supreme Court of Illinois, do not present any ground upon which this Honorable Court can base its jurisdiction.

QUESTIONS PRESENTED.

The Petitioner presents thirty-two questions to be answered. Some of them are multiple. He confuses and misstates the issues therein. He creates false issues.

We respectfully suggest that the following questions are presented:

(a) Should this Honorable Court take jurisdiction of this case when the record clearly shows that no federal statute or the validity of any state statute as to its being repugnant to the federal laws or to the constitution of the United States was drawn in question at the Trial Court.

(b) Should the petition be allowed and the writ for certiorari be issued when it does not appear affirmatively in the record:

1. That there is a fairly debatable constitutional question involved.

2. That the constitutional or federal question was properly and timely raised and appropriately presented to the trial court for its consideration.

3. That the constitutional and federal question was raised in good faith.

4. That the court passed upon the constitutional and federal question.

5. That the court entered an order on the constitutionality or the validity of the statute and preserved the question for review.

6. That the Petitioner by his exception preserved any federal or constitutional question for review.

(c) (It does appear, however, in the record, that the court decided the case on questions and facts presented under the State law and nowhere did the Petitioner attack the validity of the civil practice act of Illinois.)

(d) Should the Petitioner's petition be granted and the writ of certiorari issued when the record (though partial and incomplete) shows:

1. That the Petitioner first appealed to the Supreme Court of Illinois requesting that it should take jurisdiction on constitutional grounds and the court refused to take jurisdiction of the case and transferred it to the Appellate Court, stating the court "is of the opinion, find and adjudge that this case was wrongfully appealed to this court."

2. That the Appellate Court was without jurisdiction to consider federal or constitutional questions under the law of the State of Illinois.

3. That the opinion of the Appellate Court of Illinois does not create or raise any federal or constitutional question and speaks only of the proper and sufficient application of the procedural laws of the State of Illinois.

4. That the judgment of the Appellate Court is completely silent about any federal or constitutional question.

5. That the Petitioner instead of filing a petition with the Supreme Court of Illinois for leave to appeal filed a direct appeal from the Appellate Court's judgment to the

Supreme Court of Illinois contending such appeal was a matter of right, thus failing to comply with the requirements of the Civil Practice Act of Illinois and the Rules of the Supreme Court of Illinois.

(e) Should the Petitioner's petition be granted and the writ of certiorari be issued when it is shown that the Supreme Court of Illinois declined to take jurisdiction of the case and entered an order dismissing petitioner's appeal because "it was not well taken."

(f) Should the Petitioner's petition be granted and the writ of certiorari be issued directed to the Supreme Court of Illinois when the record shows:

1. That on each occasion the court refused to take jurisdiction of the case and that it did not render an opinion or judgment on the case now considered, but entered only an order of dismissal of the appeal.

2. On its face to be defective and insufficient and to be not the record that was before the Trial and Appellate Courts, and when it is apparent that the abstract is partial, defective and incomplete.

(g) Should this honorable court allow Petitioner's petition and order the writ of certiorari be issued when the record shows that the alleged claims of the petitioner were barred by the statute of limitations?

STATEMENT OF THE CASE.

The Petitioner seeks a review of an order of dismissal entered by the Supreme Court of Illinois, refusing to take jurisdiction of the Petitioner's appeal. The Petitioner appealed directly from the Appellate Court of Illinois and failing to file a petition in the Supreme Court of Illinois for leave to appeal. He asserted that he is entitled as a matter of right to file a direct appeal in the Supreme Court because the case involved a constitutional question.

The memorandum opinion of the trial court (Abst. 54-61) and the opinion of the Appellate Court (Petitioner's Brief 59-66) sufficiently well state the case.

The Petitioner refers to his pleadings in the trial court to prove that he raised constitutional question therein. That is not correct. The record does not corroborate this contention. Six of his references speak of the defendant's conduct depriving him "of his civil rights", two of his references speak about the defendant's interference with "the due administration of justice" but in neither of those instances does he show or allege any fact that would substantiate his claim that he raised the constitutional question at the Trial Court, nor does he assert any fact or directly point out any authority holding that such statements contained in his Abstract are sufficient to raise a constitutional or federal question. He states conclusion and then proceeds to build his other fallacious conclusions thereon without any showing whatsoever where or how the opinions and orders of the Illinois courts were in error.

The respondent did not mention anywhere in his answer to the Petitioner's original complaint any constitutional

or federal question. He named what documents and pleadings were filed or what was done, but the Petitioner in five of his references (Abst. 34, 39, 40, 46, 50) that were made in his reply to the defendant's answer "denies" that the Petitioner was granted a hearing that was in conformity with due process and the requirements of equal protection of the law. His references to three places in the Abstract (Abst. 45, 47, 50) may be taken as affirmative general statements claiming that the petitioner was denied due process of law or equal protection of the law "guaranteed to him by the Federal and State Constitutions". In one of the statements (Abst. 45) he states that the Petitioner's commitment was "without notice and hearing as required by the constitutional guarantees of due process". He fails to point out what constitutional guarantee he means, State or Federal, and how they were violated and fails to point out the invalidity of any statute and why the orders and judgments of the courts of Illinois are void. The record contradicts him.

The Petitioner complains that equal protection of the laws was denied him but he does not point out a fact showing that he was unfairly and unjustly discriminated against. He complains he was denied due process of law. He had a lengthy hearing before the Trial Court (Brief, Page 63). He had two hearings before the Supreme Court of Illinois, one hearing before the Appellate Court of Illinois plus several hearings of several motions. He had his day in court but he does not tell us when, where or how or by what fact or act he was denied due process of law. He makes general statements of unfounded conclusions. The finding of the Appellate Court is that both the Probate and County Court of Cook County had jurisdiction of the Petitioner which he acknowledged but failed to present any fact to contradict that finding. He forgets that before he

can have a jury trial and introduce evidence he must have and he must state a cause of action. He omits important portions of the record and matters and evidence that were before the Trial and Appellate Courts and comes before this Honorable Court seeking to impose his version of the case contrary to the established practice and procedure and in disregard of the substantive law and in contradiction to the opinion, orders, and judgments of the Trial, Appellate and Supreme Courts of Illinois.

ARGUMENT.

The Petition and the defective certified portions of the record brought before this Honorable Court by the Petitioner do not present a single ground or reason for the issuance of the writ of certiorari. We are confident that your Honors, after reading the opinion of the Trial Court and of the Appellate Court, did not perceive a single wrong committed by the respondent, or a single breach of duty the respondent owed to the Courts of Justice, to the Petitioner, and to the Bar.

The Petitioner claims that he never was insane. (The record proves to the contrary) Why then did he wait more than seven and one-half years to commence an action against the Respondent whom he could summarily bring before the Courts of Justice? His present attorney filed a petition in the County Court of Cook County and restored him to citizenship in the year 1954. Why did he then wait more than four years to take action against the Respondent when his lawyer should and must have known that the statute of limitations bars their suit after two years? (The record shows he had no case)

In order to take a direct appeal to the Supreme Court of Illinois it is necessary, in cases like the instant case, that the validity of a statute or the construction of the constitution be involved. In order to have the Supreme Court of Illinois consider the validity of any statute as being repugnant to a Federal law or the constitution of the United States, it must be drawn in question clearly, and specifically pointed out in the trial court at the earliest opportunity; and indeed, this Honorable Court would not take jurisdiction of any case unless such matters are

drawn in question clearly and specifically, pointing out the particular statute and the particular section of the constitution claimed to have been violated. More than that is necessary to confer jurisdiction upon the Supreme Court of Illinois. There must be a fairly debatable constitutional question and not one that has been previously decided and determined by the Supreme Court of Illinois. That the constitutional question must be raised at the trial court. It must be presented for consideration by the court, and it is not sufficient to make general charges of unconstitutionality like the Petitioner has done in this case in an argument or in his brief in the Supreme Court. The question must be raised in good faith and the record must affirmatively show that the Court passed upon that question and entered an order upon it, and preserved its decision in the record for review, and the complaining party assigned error in the rendering of the judgment. The judgment of the court must be based upon the constitutional question and not upon any other issue or ground and it is not enough to raise and present the question to the court. The cases in footnote 1 clearly sustain us.(1)

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(1) *Wilson* v. *Prochnow*, 354 Ill. 98; 187 N.E. 914;
People v. *Schmidt*, 413 Ill. 80; 107 N.E. (2) 842;
Dean v. *Northern Trust Co.*, 259 Ill. 148; 102 N.E. 244;
Ryan v. *City of Chicago*, 363 Ill. 607; 2 N.E. (2) 913;
Kellogg v. *Kellogg*, 371 Ill. 241; 20 N.E. (2) 585;
City of Watseka v. *Wilson*, 11 Ill. 2d 265; 142 N.E. (2) 24;
The Village of Lansing v. *Hacker*, 7 Ill. 2d 258; 130 N.E. (2) 265;
Leffler v. *Browning*, 14 Ill. 2d 225; 151 N.E. (2) 342;
Terren v. *City of Chicago*, 413 Ill. 141; 108 N.E. (2) 476.

In the instant case the Petitioner did not attack the constitutionality of the civil practice act of Illinois or any of its sections. He only claimed error in its application to his alleged facts. The fact that the courts of Illinois did not agree with him he considered as a violation of his constitutional rights.

It is stated in the case of *Clifton M. Kimbrough, et al., Appellees*, v. *Harrison Parker, et al., Appellants*, 407 Ill. 274, 279, 95 N.E. 2d 473:

> "In this case no constitutional question was raised or passed upon in the trial court. The assignment of error made in this court can be construed only as a complaint that the court erred in its decision. The constitutional requirement of due process of law is not a guaranty that courts shall not commit error in the trial of causes, nor is it a guaranty against erroneous or unjust decisions by courts which have jurisdiction of the parties and the subject matter. Mere error in a judgment or decree does not deprive the losing party of the benefit of due process of law."

In the case of *The People* v. *Prpich*, 368 Ill. 169 at 170 the court says:

> "• • • He contends that the appointment of the conservator was in contravention of section 2 of article 2 of the Illinois constitution and of the fourteenth amendment to the Federal constitution, in that the proceeding purports to deprive the incompetent of his liberty and dominion over his property, and vested control of the property in the conservator without due process of law, and that it denies to the ward the equal protection of the law. No attack is made on the validity of any statute, but the charge is that the appointment of the conservator is void for want of conformity with the act. This does not involve a constitutional question. • • • "

This Honorable Court has approved the decisions and practice of the Illinois Courts and that, therefore, since the

Petitioner did not comply with the jurisdictional and the procedural requirements of the State of Illinois, he waived his right to raise either a State or a Federal constitutional question, and is not entitled to a writ of certiorari. (*Central Union Co.* v. *Edwardsville*, 269 U.S. 190, 194-5; *Pennsylvania Railroad Co.* v. *Illinois Brick Co.*, 297 U.S. 447, 462-5; *Parker* v. *Illinois*, 333 U.S. 571, 574-5; *Edelman* v. *California*, 344 U.S. 357, 358-9; *Hulbert* v. *City of Chicago*, 202 U.S. 275-577.) This Honorable Court stated in the case of *Lynch* v. *New York*, 293 U.S. 52, at page 54, as follows:

> "It is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it. *De Saussure* v. *Gaillard*, 127 U.S. 216, 234; *Johnson* v. *Risk*, 137 U.S. 300, 306, 307; *Wood Mowing & Reaping Machine Co.* v. *Skinner*, 139 U.S. 293, 295, 297; *Eustis* v. *Bolles*, 150 U.S. 361, 366, 367; *Whitney* v. *California*, 274 U.S. 357, 360, 361; *Mellon* v. *O'Neil*, 275 U.S. 212, 214. Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction. *Allen* v. *Arguimbau*, 198 U.S. 149, 154, 155; *Johnson* v. *Risk*, supra; *Wood Mowing & Reaping Machine Co.* v. *Skinner*, supra; *Consolidated Turnpike Co.* v. *Norfolk & Ocean View Ry. Co.*, 228 U.S. 596, 599; *Cuyahoga River Power Co.* v. *Northern Realty Co.*, 244 U.S. 300, 302, 304; *Durley* v. *Mayo*, 351 U.S. 277, 281."

The cases in footnote 2 further hold that the State has full power to regulate its appellate procedure and that if it is not followed the right of appeal is lost and further sustains the above ruling.[2]

We respectfully contend that the instant case presents and involves questions determinable only under the State law. The jurisdiction over the person of the petitioner and the process by which the jurisdiction was obtained upon him are purely statutory matters. The decisions of the State courts construing the laws of practice and procedure are binding upon all other courts of the land, unless they are unreasonable. Here the Petitioner did not attack the validity of this statute under which he was adjudicated insane and under which his Conservator was appointed. He merely says that it was erroneously done and deliberately misapplied. The opinion of the Appellate Court of this case and the cases cited by it upholding the propriety and the constitutionality of the state laws concerning lunatics and conservators, we respectfully submit, are conclusive upon the subject.

Moreover, the Petitioner appeared in the County Court of Cook County and did not attack the judgment of the court declaring him insane, admitted that it was valid, and

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[2] *Lynch* v. *New York*, 293 U.S. 52, 54; *Radio Station WOW* v. *Johnson*, 326 U.S. 120; *Central Union Co.* v. *Edwardsville*, 269 U.S. 190, 194; *John* v. *Paulin*, 231 U.S. 583, 585; *Penn. R. Co.* v. *Ill. Brick Co.*, 297 U.S. 447, 462; *Stembridge* v. *Georgia*, 343 U.S. 541, 546-7; *Parker* v. *Illinois*, 333 U.S. 571, 574-575; *Chesapeake & Ohio Ry. Co.* v. *McDonald*, 214 U.S. 191; *Harding* v. *Illinois*, 196 Ill. 78; *American Surety Co.* v. *Baldwin*, 287 U.S. 156; *Edelman* v. *California*, 344 U.S. 357; *Hulbert* v. *City of Chicago*, 202 U.S. 275, 277.

asked that he be discharged, which was done. He appeared before the Probate Court of Cook County and did not attack its order of appointing a conservator of his estate, but recognized the judgment and asked that a conservator be discharged. He then accepted the proceeds of his estate. The courts of Illinois hold, as the opinion of the Appellate Court in this case does, that the Petitioner waived any error committed in the proceedings of adjudicating him a lunatic and in the proceedings of appointing a conservator of his estate. (The construction of the State statute by a State court is binding and its decision is not reviewable by the Supreme Court of the United States. *Guaranty Trust Co.* v. *Blodgett*, 287 U.S. 509, 513; *Bowe* v. *Scott*, 233 U.S. 658, 665. When the opinion of a State court does not mention anything about the validity of any statute as being repugnant to Federal law and the case was disposed of totally on an independent ground, this Honorable Court does not take jurisdiction. *New York Central* v. *New York*, 186 U.S. 269. The ruling of the State court on questions of pleading will not be reviewed by the United States Supreme Court. *Brinkmeier* v. *Missouri Pacific R. R. Co.*, 224 U.S. 268.)

The Federal courts must follow the State law and the interpretation of the law by the state courts, even though they are intermediate courts (as in this case), especially, when (as in this case) the highest court of review declined to take jurisdiction and consider the case (*West* v. *A. T. & T. Co.*, 311 U.S. 223; *McLouth Steel Co.* v. *Mesta Machine Co.*, 214 Fed. (2) 608; *Illiff* v. *American Fire Apparatus Co., Inc.*, 277 Fed. (2) 361; *Trust Co. of Chicago* v. *Penn. R. R. Co.*, 183 Fed. (2) 641.)

It is relevant and appropriate to mention here that the above rule especially applies in cases where the courts of

the State construe the statute of limitations. The decision of the State Court on questions of the validity and application of the statute of limitations are binding upon the federal court (*Brinkmeir* v. *Mo. Pac. Ry. Co.*, 224 U.S. 268; *Wood* v. *Chesborough*, 228 U.S. 672; *Preston* v. *City of Chicago*, 226 U.S. 447, 450).

Secondly, we respectfully contend that the above rule applies equally well where a state court construed the statute concerning Appellate procedure. Under this rule the instant case presents three problems. The first arises from the refusal of the Supreme Court of Illinois to take jurisdiction of the case on the first appeal and its transfer of it to the Appellate Court. The decisions of the Courts of the State of Illinois hold that such transfer removes from the case any constitutional or federal question and the appellate court cannot consider any constitutional or federal question but must proceed to decide the case on other grounds. The authorities are clear and conclusive.[3]

At the time of the consideration of the case by the Appellate Court of Illinois, it was conclusively decided that

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[3] *Board of Education, et al.* v. *Pacific National Fire Insurance Co.*, 153 N.E. (2) 498, 19 Ill. App. 2d 290; *Group Securities, Inc.* v. *Carpentier*, 147 N.E. (2) 360; *Schyman* v. *Department of Registration and Education*, 133 N.E. (2) 551, 553, 9 Ill. App. 2d 504, Certiorari Denied 352 U.S. 1001; *Village of Lansing* v. *Hacker*, 130 N.E. (2) 265, 7 Ill. (2) 258; *Community Unit School District No. 6* v. *County Board*, 128 N.E. (2) 898, 6 Ill. (2) 320; *In re Webster's Estate*, 171 N.E. (2) 24, 21 Ill. (2) 54; *Sitelis* v. *Mouhelis*, 141 N.E. (2) 92, 13 Ill. A. (2) 131; *City of Chicago* v. *Campbell*, 170 N.E. (2) 19, 20, 27 Ill. A. (2) 456; *People* v. *Taylor*, 172 N.E. (2) 519, 29 Ill. A. (2) 143; *Wlodek* v. *Sedlacek*, 174 N.E. (2) 705, 30 Ill. A. (2) 351.

there was no constitutional or federal question involved in the case. The Petitioner, however, now contends that the opinion and judgment of the Appellate Court of Illinois created a new constitutional question. That is not correct. Nowhere in the opinion of the Appellate court appears any presentation of any constitutional question and nowhere does it appear in the record that it considered and passed upon such a question and none was preserved for review. The Petitioner, therefore, creates a false issue here. It is the ruling of the Supreme Court of Illinois that the consideration and adjudication of any constitutional or federal question by the Illinois courts must appear affirmatively in the judgment entered by the court.

In the case of *Biagi* v. *O'Connor*, 163 N.E. (2) 461, at page 463; 18 Ill. (2) 238, the court says:

> "This court's jurisdiction, however, is based only on constitutional questions necessarily presented by the Appellate Court's judgment, not by questions suggested by the reasoning which led that court to its decision. *Kamienski* v. *Bluebird Air Service, Inc.*, 389 Ill. 462, 59 N.E. 2d 853; see *Wilson* v. *Chicago & Western Indiana Railroad Co.*, 363 Ill. 81, 1 N.E. 2d 224."

In the case of *Kage* v. *Kremer, et al.*, 169 N.E. (2) 357, at page 359; 20 Ill. 2d 148, the Supreme Court of Illinois again says:

> "It is well settled that jurisdiction of this court is based only on constitutional issues necessarily presented by the Appellate Court's judgment. It is not enough that constitutional questions may be suggested by the reasoning which influenced the court in reaching its decision. *Biagi* v. *O'Connor*, 18 Ill. 2d 238, 163 N.E. 2d 461; *Kamienski* v. *Bluebird Air Service, Inc.*, 389 Ill. 462, 59 N.E. 2d 853, 854."

Thirdly—after the Appellate Court rendered its judgment in the instant case, the Petitioner filed a direct appeal to the Supreme Court of Illinois claiming a constitutional and federal question were drawn in the case. The Supreme Court of Illinois, upon motion of the respondent, dismissed the appeal, stating that it was not well taken. By that appeal the petitioner raises three problems. Does that appeal waive the right of the Petitioner to file his petition for writ of certiorari before this Honorable Court?

The appeal stands dismissed as the case adjudicates that there was no constitutional or federal question involved. The Supreme Court of Illinois did not render an opinion in the matter and we respectfully contend that all reasonable implications and intendments are that it refused to take jurisdiction of the matter because it considered that there is no constitutional question in the case, and that it was satisfied with the judgment of the Appellate Court. We firmly believe that we have shown that no constitutional question arose out of the trial court or at the Appellate Court. It is therefore reasonable and fair to conclude that the Petitioner did not follow the procedural requirements of Appellate practice in Illinois. He did not file a petition for leave to appeal as is required by sections 74 and 75 of the Civil Practice Act and by Rule 32-1 (Appendix Exhibits 4a, 7a, 9a), of the Rules of the Supreme Court of Illinois and thus having not followed or exhausted the remedies provided by law he waived his right to come before this court and ask that a writ of certiorari be issued in his behalf (*Matthews* v. *Huwe*, 269 U.S. 262; *Stratton* v. *Stratton*, 239 U.S. 55; *Newman* v. *Gates*, 204 U.S. 89, 95; *Hammerstein* v. *Superior Court*, 341 U.S. 491, 492-493; *Hulbert* v. *City of Chicago*, 202 U.S. 275; *Cox* v. *Texas*, 202 U.S. 446, 452; *Louisville & Nashville R. R.* v. *Woodford*, 234 U.S. 46, 51).

The second problem that arises because of Petitioner's appeal not being well taken is, To what court should the writ be directed? We respectfully contend that the court that entered the final judgment in this case is the Appellate Court. It was there where the full record of the case was considered. It was there where both parties presented briefs and abstracts and argued the merits of the appeal. The cases hold that when a Supreme Court refuses to take jurisdiction of a case for purposes of review, the final judgment from which an appeal must be taken is the judgment of the court that rendered the judgment and decision and not from the order of refusal to consider the case by the Supreme Court. It is to the Appellate Court the writ should be directed. (*Norfolk Turnpike* v. *Virginia*, 225 U.S. 264; *Michigan Wisconsin Pipe Line Co.* v. *Calvert*, 347 U.S. 157, 160; *Hammerstein* v. *Superior Court*, 341 U.S. 491; *American Ry. Express Co.* v. *Lever*, 263 U.S. 19; *Sullivan* v. *Texas*, 207 U.S. 416; *Chesapeake & Ohio Ry. Co.* v. *Mihas*, 280 U.S. 103; *Newman* v. *Gates*, 204 U.S. 89; *Awotin* v. *Atlas Exchange National Bank*, 295 U.S. 209, 210; *Senko* v. *LaCrosse Dredging Corp.*, 352 U.S. 370, 371.)

The third problem this wrongful appeal raises is, What record must be presented and from what Court must it come? The petitioner in this case presented to your Honors only his abstract of the record. It is clear that both his record and abstract are partial and incomplete. For example, the Appellate court's opinion mentions the affidavit of John Skontos. The Petitioner complains about it (Petition, page 10) because he says it should not have been considered, but does not make the affidavit as part of the record and he does not abstract it. He complains in his point 3, VII, page 9 of his Petition that "the Appellate Court's Decision adopted the comments and argument of the state trial court

and of the respondent, as evidence, contrary to what is shown on the face of the Record on Appeal." but does not bring up the transcript of the entire hearing or any part of it before the Trial Court, nor does he abstract it. The Trial Court had difficulty in understanding his claim and so did the Appellate Court (Opinion, page 63, Petitioner's Brief in the Supreme Court).

He failed to comply with Rule 38 of the Supreme Court of Illinois to bring up the record and present an abstract of it sufficient to adequately present the case to this Honorable Court. His appeal was dismissed.(*)

(*) In *Matson* v. *Holliday*, 25 Ill. App. (2) 90; 165 N.E. (2) 718, the syllabus states:

"The record filed in Reviewing Court must present fairly and intelligently the substance of those portions of the record on which error is assigned, and it is not the duty of successful litigant to supply deficiencies in the record."

Harris, et al. v. *Frank Annunzio, Director of Labor, et al.*, 411 Ill. 124 at page 126; 103 N.E. (2) 477.

At page 126 it is stated:

"* * * Rule 38 of this court, (Ill. Rev. Stat. 1949, Chap. 110, par. 259.38), requires the party prosecuting an appeal in this court to furnish a complete abstract of the record. Such abstract must be sufficient to present fully every error relied upon for reversal. In *Department of Finance* v. *Sheldon*, 381 Ill. 256, we held that the substance of the record should be abstracted so that it would not be necessary for the court to resort to the record to determine the issues presented; that everything necessary to decide the questions raised on appeal must appear in the abstract; and that failure of the abstract to properly present the error relied upon would warrant the court in affirming the judgment. In *Hayes* v. *Industrial Com.*,

Where the record presented to reviewing court shows that certain written or other evidence was introduced and was considered by the trial court but such evidence is not included in the transcript of the record, it will be presumed that the omitted evidence sustained the trial court's finding. (*People ex rel. Kozielec* v. *Caron*, 385 Ill. 76, 52 N.E. (2) 205; *Paul R. Simon* v. *Estate of Lothar V. Kny*, 19 Ill. App. 2d 509, 154 N.E. (2d) 327; *Smith* v. *Smith*, 5 Ill. App. 2d 383, 125 N.E. (2d) 693.)

We respectfully contend that the petitioner's contention that he had raised and asserted Constitutional questions in his pleadings in the State Trial Court (Petition 22) is not correct. None of his statements contained in his abstract is correct. They are mere general statements and not specific. Eight of the statements either refer to depriving the petitioner of his civil rights, or that defendant aimed to obstruct the administration of justice. Two of the other references are referable to the State Constitution and law and only four of his references mention the Federal Constitution. Those four are contained in the petitioner's reply to the answer of the respondent filed in the State Court. The respondent made no reference to any constitutional or Federal rights and, therefore, the petitioner could not deny

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(*) *Continued*

383 Ill. 272, we reviewed at some length previous decisions of this court concerning the application of the rule, and concluded that, where the abstract does not show any judgment entered by the trial court, the failure of the party bringing a case to this court to furnish a proper record and to properly abstract the same, so as to fully present the errors relied upon, was ground for affirmance."

that which was not asserted and, therefore, his negative assertion is a conclusion and not an affirmative statement that the court denied him due process of law or equal justice, under law. The decisions of this Honorable Court and of the Supreme Court of the State of Illinois make it clear that the general assertion of the petitioner that he raised and asserted his constitutional rights in the trial court is insufficient. We respectfully say it is untenable and frivolous.

The raising of the constitutional or federal question must not be a formal one. It must be a substantial question and not frivolous. *Equitable Life Assurance Society* v. *Brown*, 187 U.S. 308, 311; *Pennsylvania R. R. Co.* v. *Illinois Brick Co.*, 297 U.S. 447, 462-463.

A mere assertion that a constitutional question is involved, or a constitutional right was invaded, is not in itself sufficient to confer jurisdiction. *People* v. *Estep*, 97 N.E. (2) 823, 825; 409 Ill. 125, certiorari denied, 73 S. Ct. 1112; 345 U.S. 970.

A general assertion in the brief on appeal that petitioner's constitutional rights have been violated or that a Statute is unconstitutional is not sufficient to confer jurisdiction on the Supreme Court. *Scro* v. *Franke*, 20 Ill. (2) 70; 169 N.E. (2) 335, 337. *Memphis Natural Gas Co.* v. *Beeler, et al.*, 315 U.S. 649, 651; *Jett Bros. Distilling Co.* v. *City of Carrollton*, 252 U.S. 1, 5-6; *Stadelman* v. *Miner, et al.*, 246 U.S. 544; *French* v. *Taylor*, 199 U.S. 274.

In *Bowe* v. *Scott*, 233 U.S. 658, 664, it is stated: " 'That the ordinance is an attempt to take from your complainants whose property adjoins and abuts upon the said alley their rights in and to said alley without due process of law.' But it is settled that such an averment making no reference to the Constitution of the United States and asserting no ex-

press rights thereunder is solely referable to the State constitution, which in this instance has a due process clause, and affords no basis whatever for invoking the jurisdiction of this court. *Miller* v. *Cornwall R. R. Co.*, 168 U.S. 131, 134; *Harding* v. *Illinois*, 196 U.S. 78."

In *New York Central R. R. Co.* v. *New York*, 186 U.S. 269, at 273, it is stated: "But assuming, without intimating an opinion to that effect, that the raising of a Federal question in the brief might be sufficient, it is well settled in this court that it must be made to appear that some provision of the Federal, as distinguished from the state, Constitution was relied upon, and that such provision must be set forth."

The Federal question cannot be deduced by inference, *Oxley Stove Co.* v. *Butler Co.*, 166 U.S. 648, 655; *Thomas* v. *State of Iowa*, 209 U.S. 258; *Seno* v. *Franke*, 169 N.E. (2) 335; 20 Ill. (2) 70.

CONCLUSION.

For the reasons aforesaid, we respectfully submit that the petition of Petitioner for writ of certiorari be denied.

Respectfully submitted,

JOHN C. GEKAS, *Pro Se.*

JAMES P. ECONOMOS,
Of Counsel.

APPENDIX.

EXHIBIT A

At A Term Of The Appellate Court, begun and held at Chicago, on Tuesday, the Third day of October, in the year of our Lord, One Thousand Nine Hundred and Sixty-One, within and for the First District of the State of Illinois:

Present,
The Honorable Arthur J. Murphy, Presiding Justice;
" " Henry L. Burman, Justice;
" " Robert E. English, Justice.

Leslie V. Beck, Clerk — Frank G. Sain, Sheriff

Peter Skontos, also known as Panagiotis Skoundrianos, Appellant

No. 48390 vs.

John C. Gekas, Appellee

Monday, October 16th A.D. 1961

Error to .....

Appeal from Cook Superior

Superior Court No. 59 S 8012

On this day came again the said parties, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for Error, and being now sufficiently advised of and concerning the premises, for that it appears to the Court now here, that neither in the Record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious, or defective and that in the Record there is no Error. Therefore, it is considered by the Court that the judgment aforesaid, be

(Appendix)

Affirmed in all things, and stand in Full Force And Effect, notwithstanding the said matters and things therein assigned for Error. And it is further considered by the Court that the said Appellee recover of and from the said Appellant, his costs, by him in this behalf expended, to be taxed, and that he have execution therefor.

I, Leslie V. Beck, Clerk of the Appellate Court of the First District of the State of Illinois, and keeper of the records, files and seals thereof, Do Hereby Certify, that the foregoing is a true copy of the final order of the said Appellate Court in the above entitled cause of record in my office.

In Testimony Whereof, I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this 8th day of May in the year of our Lord One Thousand Nine Hundred and Sixty-Two.

/Sd/ Leslie V. Beck
Clerk of the Appellate Court of
the First District, Illinois.

(Seal)

(Appendix)

EXHIBIT B

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of January in the year of our Lord, one thousand nine hundred and sixty-two, within and for the State of Illinois.

Present:

Harry B. Hershey, Chief Justice
Joseph E. Daily, Justice
Walter V. Schaefer, Justice
Ray I. Klingbiel, Justice
Byron O. House, Justice
Roy J. Solfisburg, Jr., Justice
William G. Clark, Attorney General
Robert G. Miley, Marshal

Attest: Mrs. Earle Benjamin Searcy, Clerk

Peter Skontos, also known as Panagiotis Skoundrianos, Appellant No. 37000 vs. John C. Gekas, Appellee	Appeal from Appellate Court First District 59 S 8012 48390

And now, on this day, the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the appellee to dismiss this appeal and being fully advised of and concerning the premises, are of the opinion that the said appeal is not well taken.

Therefore, it is considered and ordered by the Court that said appeal be and the same is hence dismissed.

(Appendix)

And it is further considered by the Court, that the said appellee recover of and from the said appellant costs by him in this behalf expended, to [illegible] that he have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court, this 30th day of January, A. D. [illegible]

/s/ Mrs. Earle Benjamin Searcy
Clerk, Supreme Court of the State of Illinois

(Seal)

EXHIBIT C

"101.32 (Supreme Court Rule 32). Appeals from the Appellate Court to the Supreme Court.

(1) The party applying for leave to appeal from an Appellate Court shall file a petition in this court, stating therein the reasons for and grounds of appeal. The clerk of this court shall thereupon transmit a certificate of the filing of the petition to the clerk of the Appellate Court who shall transmit to the clerk of this court the record which was transmitted to the Appellate Court with a certified copy of the record of the Appellate Court appended thereto. In case the leave is not granted the record shall be returned forthwith to the clerk of the Appellate Court.

The petitioner shall file with his petition an abstract of the record as prescribed by rule. The petition shall be printed in the manner prescribed for briefs.

The petition shall contain a statement of the points relied upon for a reversal of the judgment, together with authorities and suggestions, concisely stated in support of the points, a prayer for leave to appeal, and a statement of the date upon which the judgment of the Appellate Court became final. The petition shall contain, or have attached thereto, a printed copy of the opinion of the Appellate Court. If the facts are correctly stated in the opinion they shall not be restated in the petition. If the facts are not so stated, the petitioner may, preliminary to his statement of points, note the inaccuracy or insufficiency and correct or supply the same.

A petition violating this rule will be stricken.

Fifteen copies of the petition and abstract, with proof of service, shall be filed within the time provided by statute. The respondent may file 15 printed copies of an answer to the petition, with proof of service, within the time provided by statute. The answer shall state briefly the points and authorities relied upon to meet or obviate the points of the petitioner, and to sustain the judgment. No reply to the answer shall be filed.

* * * * *

(3) In all criminal cases and in civil cases when notice of appeal as of right is filed in the Appellate Court the clerk shall, not later than 15 days thereafter, transmit to the clerk of this court the same record as provided in this rule in cases of leave to appeal, together with certified

copies of the notice of appeal and the proof of service. If the record has theretofore been transmitted to this court on petition for leave to appeal or on appeal by certificate of importance the clerk of the Appellate Court shall transmit only the certified copies of the notice of appeal and proof of service, which, together with the record theretofore filed in this Court, shall stand as the record on both appeals, without order of court."

EXHIBIT D

Illinois Supreme Court Rule 38.

"Abstracts. The party prosecuting an appeal in this court or an Appellate Court shall furnish an abstract of the record on appeal, referring to the pages of the record by numerals on the margin. If the record contains the evidence it shall be condensed in narrative form so as to present clearly and concisely its substance. The abstract shall be preceded by a complete index, alphabetically arranged, indicating the nature of each exhibit, i.e., Will, Trust Deed, Contract, and the like, and the page on which it may be found, and giving the names of the witnesses and the pages of the direct, cross and redirect examination. In cases brought from an Appellate Court the abstract filed in that court may be filed in this court by changing the cover and including an abstract of the record of the Appellate Court with an index thereto. The abstract need only be sufficient to present fully every error relied upon. Matters in the record on appeal not necessary for a full understanding of the questions presented for decision shall not

be abstracted. Upon motion and good cause shown after the filing of the record on appeal, the court or a judge thereof in vacation may dispense with the furnishing of an abstract or with the abstracting of matters in the record even though they are to be considered on appeal. The abstract will be taken to be accurate and sufficient unless the opposing party files an additional abstract, making necessary corrections or additions. The additional abstract may be filed without order of court."

EXHIBIT E

Illinois Revised Statutes, Chapter 110, Section 74.

"Method of Review.

(1) Every order, determination, decision, judgment or decree reviewable by the Supreme or Appellate Court of this State is subject to review by notice of appeal. The review shall be designated an appeal and constitutes a continuation of the proceeding in the trial court. The appeal presents to the reviewing court all issues which heretofore have been presented by appeal and writ of error. The right heretofore possessed by any person not a party to the record to review a judgment or decree by writ of error is preserved by notice of appeal.

(2) All distinctions between the common law record, the bill of exceptions and the certificate of evidence, for the purpose of determining what is properly before the reviewing court, are abolished. The trial court record shall include every writ, pleading, motion, order, affidavit, and

other documents filed or entered in the cause and, in addition, all matters before the trial court which are certified as a part of the record by the judge thereof. All matters in the trial court record actually before the court on appeal may be considered by the court for all purposes, but if not properly authenticated the court may order further authentication.

(3) Every order, determination, decision, judgment or decree of the Appellate Court heretofore reviewable by the Supreme Court by writ of error shall hereafter be reviewable only by appeal. The appeal shall be perfected by notice of appeal filed with the clerk of the Appellate Court within 40 days after the order, determination, decision, judgment or decree of the Appellate Court becomes final, either through denial of a petition for a rehearing or the expiration of the time within which a petition for rehearing might have been filed. The form and contents of notice of appeal shall be, as near as may be, as provided by rule of the Supreme Court for notice of appeal in the case of an appeal from a trial court. No step in the perfection of the appeal other than the filing of the notice of appeal is jurisdictional. The appeal may be taken by any person heretofore entitled to sue out a writ of error. It presents to the Supreme Court all issues heretofore presented by writ of error, and constitutes a continuation of the proceeding in the Appellate Court. All steps subsequent to the filing of the notice of appeal shall be as provided by rule. As amended by act approved July 19, 1955. L. 1955, p. 2238."

(Appendix)

EXHIBIT F

Illinois Revised Statutes, Chapter 110, Section 75.

"Jurisdiction of Appellate and Supreme Courts.

(1) Appeals shall be taken directly to the Supreme Court (a) in all cases in which a franchise or freehold or the validity of a statute or a construction of the constitution is involved, (b) in all cases relating to revenue, or in which the State is interested as a party or otherwise and (c) in cases in which the validity of a municipal ordinance or county zoning ordinance or resolution is involved and in which the trial judge certifies that in his opinion the public interest so requires.

(2) In all cases in which their jurisdiction is invoked pursuant to law, except those wherein appeals are specifically required by the constitution of the State to be allowed from the Appellate Courts to the Supreme Court, the judgments or decrees of the Appellate Courts shall be final, subject however, to the following exceptions: (a) in case a majority of the judges of the Appellate Court or of any branch thereof shall be of the opinion that a case decided by them involves a question of such importance, either on account of principal or collateral interest, as that it should be passed upon by the Supreme Court, they may in such case grant leave to appeal to the Supreme Court on petition of parties to the cause, in which case the said Appellate Court shall certify to the Supreme Court the grounds of granting said appeal. (b) In any such case as is hereinbefore made final in the Appellate Courts it is competent for the Supreme Court to grant leave to appeal

for its review and determination with the same power and authority in the case, and with like effect, as if it had been carried by appeal to the Supreme Court. (c) In any case heard and determined in the trial court upon actual trial in which the Appellate Court upon appeal from the final judgment or decree entered in the cause in the trial court reverses the judgment or decree and remands the cause for a new trial or hearing, and in which the party in whose favor the trial court's judgment or decree was rendered presents to and files with the Appellate Court an affidavit stating that he will be unable on a future trial or hearing to adduce other or additional evidence, facts or circumstances that were adduced in the trial court and expressly waiving the right to a new trial or hearing and consenting and requesting that the portion of the judgment of the Appellate Court remanding the cause for new trial or hearing be deleted and stricken from the judgment of the Appellate Court, then that court upon motion shall amend its judgment by strking out the portion thereof remanding the cause for new trial or hearing. Thereupon it is competent for the Supreme Court to grant leave to appeal from such final judgment of reversal for its review and determination with the same power and authority in the case, and with like effect, as in other cases in which leave to appeal from the final judgments of the Appellate Courts is authorized in this section.

Provided, however, the application under this Act to the Supreme Court to cause it to grant leave to appeal for its review and determination shall be made within 40 days after the judgment of the Appellate Court has become final, either through the denial of a petition for rehearing or the expiration of the time within which a petition

for rehearing might be filed; otherwise the power of the Supreme Court to review the judgment and decree of the Appellate Court shall cease to exist. Answers to such petitions for leave to appeal may be filed by respondent within 15 days after the expiration of the time for the filing of the petition for leave to appeal or within such further time as the Supreme Court or some Justice thereof in vacation may grant, if granting within such 15-day period. As amended by act approved July 21, 1959. L. 1959, p. 1784."

EXHIBIT G

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of January, in the year of our Lord, one thousand nine hundred and sixty-one, within and for the State of Illinois.

Present:

Walter V. Schaefer, Chief Justice
Joseph E. Daily, Justice
George W. Bristow, Justice
Harry B. Hershey, Justice
Ray I. Klingbiel, Justice
Byron O. House, Justice
Roy J. Solfisburg, Jr., Justice
William G. Clark, Attorney General
Robert G. Miley, Marshal
Attest: Mrs. Earle Benjamin Searcy, Clerk

Peter Skontos, also known as Panagiotis Skoundrianos, Appellant

(48390)
No. 35856 vs.

John C. Gekas, Appellee

Appeal from Superior Court Cook County
59 S 8012

(Appendix)

And now, on this day, the Court having diligently examined and inspected the record and proceedings aforesaid as well as the briefs and argument filed herein, and now being fully advised in the premises is of the opinion, find, and adjudge that this case was wrongfully appealed to this Court.

Therefore, it is ordered by the Court that this case be and the same is hereby transferred to the Appellate Court for the First District of the State of Illinois, and the Clerk of this Court is directed to transmit the transcript and files herein with the order of this transfer to the Clerk of said Appellate Court.

And it is further ordered by the Court that the said appellee recover of and from the said appellant costs by him in this behalf expended, to be taxed, and that he have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 24th day of January, A.D. 1961.

/s/ Mrs. Earle Benjamin Searcy,
Clerk, Supreme Court of the
State of Illinois.

(Seal)